

# **ELBERT COUNTY, COLORADO**

The Board of Elbert County Commissioners met in a regularly scheduled meeting on March 14<sup>th</sup>, 2012 with roll call of members as follows:

**Del Schwab- PRESENT**

**Kurt Schlegel- PRESENT**

**John Shipper- PRESENT**

The Board of County Commissioners convened at 9:08 a.m., Chairman Del Schwab called the meeting to order.

Opening prayer given by Dave Link of the Douglas/Elbert Livestock Association

Pledge of Allegiance

**The Board of County Commissioner's meetings are Streamed Live via the Internet and recorded for later use**

- 1. AGENDA:** Commissioner Schlegel added the Cowboy Up Rodeo event schedule and request to sell Liquor for 2012, item 3e, to the Consent Agenda and read into record dates as follows:

<b>Kiowa Spring Sale</b>	<b>May 5<sup>th</sup>, 2012</b>
<b>4<sup>th</sup> of July Celebration</b>	<b>June 30<sup>th</sup>, 2012</b>
<b>Cowboy Up Rodeo</b>	<b>July 28<sup>th</sup>, 2012</b>
<b>Fair Bull Ride</b>	<b>August 2<sup>nd</sup>, 3<sup>rd</sup>, &amp; 4<sup>th</sup>, 2012</b>
<b>Kiowa Fall Sale</b>	<b>October 6<sup>th</sup>, 2012</b>

Commissioner Shipper seconded, motion passed.

Commissioner Shipper moved to delete Attorney item b, Approval of Haven Corporation Independent Contract for Therapeutic Monitoring Services, as the contract has been previously approved.

Commissioner Shipper moved to accept the Agenda as amended, Commissioner Schlegel seconded, motion passed.

- 2. Correspondence:** None

**3. Consent Agenda:** All matters listed on the Consent Agenda are considered routine by the Board and will be enacted by one (1) motion in the form below. There will be no separate discussion of these items. If discussion is desired on any item(s) and permitted by the Board, those items will be considered separately.

- a. Approval of minutes from February 22<sup>nd</sup>, 2012 BOCC Meeting and February 27<sup>th</sup>, 2012 Special Meeting.
- b. Vouchers/Warrants
- c. Renewal of Spring Valley Golf, LLC Liquor License.
- d. Release of Escrow Funds in the amount of \$2,000.00 to Enertia Consulting Group, LLC for NextEra Wind Farms.
- e. Added item # 1 as stated above.

Commissioner Shipper moved to approve Consent Agenda as drafted and amended, Commissioner Schlegel seconded, motion passed.

**4. AWARDS/RECOGNITION:**

Commissioner Schwab introduced the winners of the Legacy Science Fair, highlighting one science project in particular, 6<sup>th</sup> grader; Payton Baldwin's 'Talking on a cell phone while driving'. Ms. Baldwin gave a very well planned out presentation of the hazards of driving while talking on a cell phone. Commissioner Schwab explained that portions of Ms. Peyton's presentation will be used by Deputy Troy McCoy during training.

The Legacy Science Fair Winners and certificate recipients are as follows:

4<sup>th</sup> Grade- Colton Arciniaga  
Mason Reyher  
Jonah Thomas  
Anna Mowbray

6<sup>th</sup> Grade- Peyton Baldwin  
Kelly Lynch  
Reilly Blakeslee  
Calli Moore

7<sup>th</sup> Grade- Trevor Stanfill  
Megan Kelly  
Jadeann Dahlem  
Rece Lehberger

8<sup>th</sup> Grade- Logan Blakesee/Levi Walters  
Michaela LaMantia  
Tegan White  
Katie McChesney/Ali Morgan

Best Invention: Brendan Cross

Best Robot: Jared Martens

Best Rube Goldberg Devise: Matt Lynch/Kyle Savickas

Commissioner Schwab paused the meeting while the children were escorted from the room.

Meeting reconvened at 9:17

5. **ELECTED OFFICIAL/DEPARTMENT HEADS:** The Elected Officials and Department Heads comments is a time when any elected official or department head may bring forth items of interest or concern. During this time each individual will have (3) minutes to present view(s) on County matters. No formal action will be taken on these items during this time.

Commissioner Shipper read into record a letter regarding the Elizabeth 86 Residential Metropolitan District and was followed by Richard Miller, Elbert County Community and Development Services Director.

The letter is as follows:

“As many of you are aware, an Organizational hearing for the Elizabeth 86 Residential Metropolitan District and the Elizabeth 86 Commercial Metropolitan District has been set for Friday, March 16, 2012 in Elbert County District Court. In light of such hearing, questions have been raised regarding whether this Board can vacate, rescind or revoke a prior Board’s approval of the Service Plan for either or both of these special districts.

Boards of County Commissioners are vested with a variety of powers under Colorado statute. Some powers are legislative in nature, and allow the Board to pass rules, regulations and policies governing matters within the County. Other powers are judicial in nature, which require the Board to grant or deny approvals, or to render a decision in some manner. When the board is required by Colorado statute to exercise its judicial powers to render a decision regarding a proposed Service Plan, it is the Board’s duty and obligation to apply the relevant statutory criteria in reaching its decision. If an allegation is made that such decision did not comply with statutory criteria, then certain procedures exist under Colorado law for a party to seek judicial review of the Board’s decision. However, there are strict deadlines by which such review must otherwise be sought.

Here, a prior Board exercised its statutory powers and rendered a decision approving the Service Plans. As such, the applicant is vested with certain rights under Colorado law in relying upon and preserving such decision. We have reviewed the matter with the County Attorney’s office, and have been informed that if this Board were to take steps in an effort to vacate, rescind or revoke the prior Service Plan approvals, it could result in legal action against Elbert County, and could potentially subject Elbert County to significant liability.

Even so, the Board still retains the statutory ability to ensure compliance with the Service Plans. Each special district must file an annual report with the

Board, which will include information about how each special district is implementing its Service Plan. These annual reports will be deposited with the County Clerk and will be made available for public inspection. Further, the Board is authorized to review these annual reports in a regularly scheduled public meeting. If the Board finds that a special district is not following its approved Service Plan, the Board can immediately file a motion with the Court to seek an injunction for any material departure.

This Board has taken several extraordinary steps to proactively address service plan issues in Elbert County, including the imposition of a 12 month moratorium on the review of all service plans and service plan amendments for all new and existing metropolitan districts in Elbert County. Although such moratorium does not affect the original approval of these Service Plans, it does restrict any subsequent efforts to change or modify the approved Service Plans.

This Board remains committed to addressing the unique impacts the water districts and metropolitan districts have on the citizens of Elbert County, and will continue to take appropriate steps within the authority granted by Colorado law to address such matters.”

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Richard Miller, Elbert County Community and Development Services. For the benefit of the public, Mr. Miller was asked by the Board to report on any potential implications and impact of rescinding the Elizabeth 86 Commercial and Residential Metropolitan District. Mr. Miller provided background information on the two districts as follows:

“Elbert County reviews Service Plans for Special Districts under Title 32 of the Colorado Revised Statutes. All special districts are required, since 1965, to file a service plan with the Board of County Commissioners in which the district is proposed. Upon review the Board of County Commissioners has the authority to:

- Approve the service plan “without condition or modification”;
- Disapprove the service plan; or
- “Conditionally approve the service plan to submission of additional information relating to or the modification of the proposed service plan” (C.R.S. 32-1-203).

The Elbert County Planning Commission held two public hearings (August 26, 2012 and September 9, 2010), each with public input, and forwarded a

recommendation of approval to the Board of County Commissioners with the condition that “a satisfactory financial study be conducted by a third party profession”.

On September 22<sup>nd</sup>, 2010, the Board of County Commissioners approved SP10-0023 the Elizabeth 86 Residential Metropolitan District under Resolution number 10-58 and the Elizabeth 86 Commercial Metropolitan District under Resolution number 10-59.

In the approving resolution for the two districts, the Board of County Commissioners per compliance with Title 32:

- Followed due notice, held a public hearing on the service plans on September 22<sup>nd</sup>, 2012; and
- Considered the service plans and all other testimony and evidence presented at the hearing; and
- Based upon the testimony and evidence presented at the hearing, it appeared that the service plans should be approved by the Board of County Commissioners in accordance with 32-1-203, C.R.S.

The Board of County Commissioners approved the districts on September 22<sup>nd</sup>, 2012, subject to the following two conditions:

- A satisfactory financial study by a third party professional; and
- Adopt the findings enumerated within the approving resolutions.

Regarding the first Condition of Approval, Clifton Gunderson, LLP was the County's consulting accounting firm at the time these districts were processed. Clifton Gunderson, LLP reviewed the financial plan submitted by the districts and made comments with suggested changes to the financial plan. The applicant's attorney responded to Clifton Gunderson's comments after consulting with their financial advisor, George K Baum & Company, and addressed all outstanding issues to the satisfaction of Clifton Gunderson. A letter from Community & Development Services, dated September 22<sup>nd</sup>, 2010 confirms completion of the two above-mentioned conditions of approval that were imposed by the Board.

(Mr. Miller provided a slide-aerial with proposed land uses)

A District Court hearing regarding the Elizabeth 86 Residential Metropolitan District has been scheduled for Friday, March 16<sup>th</sup>, 2012. The court hearing is for one primary purpose: to obtain a court order calling for the organizational elections for two districts. These local districts are to serve the 98.5 acre parcel

shown on the slide and only this 98.5 acre parcel. This is the physical boundary of the property to be served- these 2 districts cannot provide services outside this property.

Some have tried to imply that this is a resurrection of the proposed amendment to the Elbert & Highway 86 Commercial Metro District that was proposed and withdrawn by the applicant before the Board of County Commissioners public hearing, late last year. They are claiming that the applicant is now going to the court to do an "end run" around the County- that is simply not true. In fact, the court cannot approve a service plan; in Colorado and according to State Statute, the approval of metropolitan districts is the responsibility of the Board of County Commissioners.

I want to state this very clearly; the Elizabeth 86 Residential and Commercial Metropolitan Districts are not related in any way to the statewide district that was proposed as an amendment to the Elbert & Highway 86 Commercial Metro District late last year. That application was withdrawn by the applicant prior to the Board of County Commissioners' public hearing.

Commissioners, I would like to discuss some of the implications and impacts, should you consider rescinding the districts to serve this 98.5 acre parcel:

- First, we should expect an immediate legal challenge to the decision to rescind. The County will need solid, irrefutable evidence to justify rescinding the approvals. The approving resolutions indicate that the Board believed that "*having followed proper procedures and having listened to public testimony and reviewed the evidence submitted, that the districts were in the best interest of the area to be served*".
- There will be a significant amount of attorney time and expenses to defend rescinding the districts. The cost of litigation and likelihood of prevailing in litigation should also be considered. As with any litigation, the prevailing party may be entitled to compensation for their attorney's fees and other legal expenses. As with any litigation, the prevailing party may be entitled to compensation for their attorney's fees, expenses and possibly damages.
- Rescinding the districts will severely impact Elbert County's ability to attract prime retail/commercial opportunities. The districts' boundaries include land which is situated to become the premiere retail/commercial activity center in the County for the foreseeable future. The land has existing road infrastructure and potential access from State Highway 86 and Legacy Circle. It is located in an area of the highest population base for the County, which make it the most desirable area for commercial/retail activity. There

is adequate water and sewage capability for full development. This property, along with the pad sites in the adjacent Wild Point Center, represents the most likely commercial tax base for the County for the foreseeable future. Elbert County must look to the future and build a viable community, which is not primarily dependent upon a residential and agricultural tax base.

- Rescinding the two districts will result in a delay of any potential development and the County's collection of the 1% road and bridge sales tax and any potential percentage of taxes based upon retail sales.
- There will also be a loss of permit and Development fees. Any development on the land encompassed by the districts will require completion of the rezoning, subdivision, and 1041 requirements and payment of application fees. Additionally, once the subject land is platted, a site plan review with related fees will be required for each pad site. Building permit fees will be collected and also impact fees based upon the square footage of office, retail, multi-family, and other uses within the boundaries of the districts. Rescinding the districts will delay any potential for development on the property.
- There will be a loss of jobs in construction, services, and retail job opportunities within the community.
- There will also be uncertainty for property owners in the vesting of property rights. Should the Board decide to rescind the two districts, after the applicant has followed the requirements of the C.R.S. and County procedures; the result will be the uncertainty of vested property rights in Elbert County. If businesses, ranchers and even residential property owners cannot depend upon the vesting of property rights after having gone through the review process, met all conditions of approval, and gained Board of county Commissioner approval documented with a Resolution, there would more than likely be a dramatic reduction of real estate and development activity in Elbert County. Funding for real estate in Elbert County would be difficult, if not impossible. There must be certainty in the entitlement process for property in Elbert County.

Commissioners, for the reasons stated in my presentation, it is truly my belief and recommendation, as the County Planning Director, that you not rescind the Elizabeth 86 Residential and Commercial Metropolitan Districts."

Cherie Radeker, Elbert County Director of Administrative Services. Ms. Radeker came before the Board to report efforts made by the Administrative Office to correct errors made regarding the Open Records Request process. Ms. Radeker stated, "In a recent Open Records Request the document provided from the Department reflected errors accordingly, it has believed that this is contributed the Affidavit currently being disseminated to Elbert County citizens as well as the publishing of the same by the Ranchland News, West Elbert Count Sun. the Administrative Office has been working diligently to correct all errors which are complete. Accordingly, corrective measures have been taken and the Department in the implementing procedures to keep this type of error from reoccurring in the future. The Administrative Office would like to thank the concerned citizens for making the Department aware of the error, as the Office would have never knowingly provided inaccurate information or intentionally tried to mislead the citizens of Elbert County. I sincerely apologize for any misconception and for any inconvenience this has caused. For the record the Administrative Office has spoken to the citizen who received the documents in error on several occasions. Even so far as to explain the pay that the Elbert County employees are getting which includes, but not limited to certain other pay that may be deemed necessary to remain in compliance with the Federal Wage and Hour Division. The Administrative Director has implemented procedures and to the best of our ability all information distributed to the public will be accurate and correct".

Ed Ehmann, Elbert County Public Works. Mr. Ehmann came before the Board to update projects in Elbert County. These updates are as follows:

- Paving of County Road 45 and the Kiowa/Bennett Road. The Road & Bridge Department is monitoring temperatures for paving. A consistent temperature of 50 degrees and rising is required before paving can commence. Mr. Ehmann's projection for these two paving projects will be in April.
- Replacing 4 miles of chip seal on County Road 194.
- Elbert County posted their reports with the Colorado Department of Public Health and Environment regarding the Elbert Compactor Site. The report identifies a timeline regarding the events that took place with the compactor site and the Titan Missile site.
- The Elbert County Fairgrounds Master Plan meeting was held March 16<sup>th</sup>, 2012. The Master Plan will be posted on the Elbert County website. Public comment is welcome.



Commissioner Schlegel commended Mr. Ehmann, staff and Enertia Consulting for time and effort put into the Fairground Master Plan.

Richard Miller, Elbert County Community & Development Services. Mr. Miller reminded the public of a meeting tonight, March 15<sup>th</sup> at 6:30 for the Oil & Gas Edit Committee, the public is welcome.

Commissioner Schlegel added that the Board of County Commissioners is actively participating in the Governor's Task Force on Oil & Gas Regulations. The Governor signed an Executive Order two weeks ago establishing the Task Force. Elbert County belongs to Colorado Counties Inc. and has a representative on the Governor's Task Force. All issues to be addressed by the Task Force are to be forwarded to Commissioner Schlegel; these issues will be passed on.

**6. Public Comment:** The public comment is a time when any citizenry may bring forth items of interest or concern. During this time each individual will have three minutes to present view(s) on County matter(s). No formal action will be taken on these items during this time due to open meeting provision; however, the items may be placed on a future posted Agenda if action is required. If you have comments on a regular Agenda item(s), please hold your comments until that item is up for consideration. The public comment portion of the Board of County Commissioner meeting is not to be used for campaign purposes; comments/questions should be limited to matters of County affairs and business. When you approach the podium please identify yourself and spell your last name and give your address.

- Elbert/Douglas Livestock Association: Dave Link- oil & gas concerns. Mr. Link expressed the concerns of the Livestock Association with regard to oil and gas regulations in Elbert County. Those concerns are as follows:
  - The Rules could result in the regulatory takings with real economic impact of the land owners and royalty owners.
  - The Rules could interfere with the inability of land owners and a company to enter into a Surface Use Agreement acceptable to both parties.
  - Many of the Rules provisions are preempted by a myriad of Federal laws; in example- NAPA, The ECA, The Migratory Bird Treaty Act, The Bald and Golden Eagle protection Act etc.

Data collection under these Rules raises real concern with privacy and confidentiality. To participate in this process requires extensive red tape and would cost land owners valuable time to participate in endless hearings, meetings and appeals to protect their own property. My rights

as a land owner are being preempted by these Rules. The Constitution grants unrestricted use and enjoyment of owning private property not the restricted use and enjoyment of owning private property through approval and proposed Rules. As a land owner I protect my rights and land resources at the time of gas exploration through negotiation of a Surface Agreement. The County under law or Rule has no role in mandating conditions to that negotiation. The Colorado Oil and Gas Commission should be the primary agency charged with regulating oil and gas development in the State. Due to this responsibility the COGCC has worked closely with Counties to protect public health, safety, welfare of land, water and human resources. Counties have rights in these processes and should pursue those opportunities as opposed to new, overlapping and reaching regulations. To be more specific, for Elbert County, regulations should not conflict with State regulations. Elbert County's proposed Rules do this in these areas. New requirements that differ substantially from the COGCC rules in the area of setbacks, well spacing, noise standards, water protection, fencing, wildlife, waste produced water and storm water management and new requirements beyond the COGCC Rules scope in the area of operating plans. Rules of this nature will create inconsistent obligations for land owners, oil and gas operators and will certainly generate confusion over which requirements should be followed, all of which equate to time and money. We also believe that the State of Colorado has the most stringent rules regarding oil and gas exploration of any of the neighboring States and believe these Rules should be followed and no additional regulations need to be put in place. The Rules that are in place are well thought out and provide protection for all; including surface owners and owners of mineral rights below the surface.

- Rick Morgan, Veterans Services Office Update: Mr. Morgan updated the Board regarding a program in the 18<sup>th</sup> Judicial District. Approximately 1.6 million veterans will be honorably discharged and returning from Iraq and Afghanistan by the end of 2014. Adding in National Guard and Reservists; brings the number closer to 2.6 million veterans. Based on demographic studies approximately 5,000 veterans will be returning to the 18<sup>th</sup> Judicial District. Based on these studies, a significant portion of these veterans will return with conditions related to combat trauma. The Elbert County Veterans Service Office is involved in planning a program to accommodate

these returning veterans to ensure they get the treatment they deserve; this treatment will be provided by the Veterans Administration (VA). Included in this service program is a treatment for veterans with lower level felonies or some misdemeanors. This does not include violent felonies, sexual assault or crimes against children; however, the program does include disorderly conduct such as a bar fight or similar offenses. Veterans who have been sentence to jail time are placed in this program in an effort to get them the treatment they need for combat related trauma. This is a voluntary program designed to help the returning Veteran deal with trauma and return to everyday life; Veterans are not forced to take part in this treatment. This program is designed to save treatment centers thousands of dollars because the cost is off loaded to the VA. This treatment program is a collaborative effort between the 18<sup>th</sup> Judicial Attorney's Office and the VA. Commissioner Schlegel inquired about the funding for this program. Mr. Morgan explained that the funding for this program will come from a Federal grant until 2018.

- Kiowa Fire 'Community Paramedic Program' Dian Bowers, Kiowa Fire Chief.

Chief Bowers presented the Community Paramedic Program, a two year long project which will be paid for through a Federal grant in conjunction with Colorado Rural Health.

The particulars of the program are as follows:

- Colorado is positioned to open six (6) new Community Health Paramedic Programs. Elbert County will be one of 24 through the Nation.
- This program is a model to provide Primary Health Care Services ordered by a physician and delivered in the patient's home.
- This is a Community Based Prevention Service Plan providing a Public Health Model of Delivery.
- Directing Physician requests by sending a paramedic to a patient's home.
- Home based physical assessments and safety assessments are performed.

Through the Paramedic Program we become the liaison between the Doctors, patients and further referral services which may not be identifiable if not for in home visits.

- Chronically ill patients with transportation issues benefit greatly.
- Potentially reducing 911 calls.

At the beginning of 2012 the Federal Government and Medi Care announced that they would no longer cover the cost of patients being re-admitted to the hospital for the same medical issues within 30 days. Recently hospitalized patients will benefit through the Paramedic Program follow up, thus reducing numbers of patients being re-admitted to the hospital.

This program will provide medical care for the medically underserved in Elbert County with paramedic coverage around the clock and provide health care jobs.

This will be a completely funded 3 year pilot program with the expectation of proving that this program deserves support in the future. This program will also provide two new medically trained professionals and a remote camera which will allow a physician to view the patient and make appropriate medical decisions. If funding is approved, the program is scheduled to be in operation by September 2012.

Commissioner Schlegel inquired how the citizens of Elbert County would access this program.

Chief Bowers explained that a physician referral would be required. These referrals can come from Human Services support, local medical agencies, a citizens own physician etc., who would contact the Program Director.

Commissioner Schlegel inquired as to available funding to educate new paramedics.

Chief Bowers confirmed that there will be funding for paramedic education.

Commissioner Schwab commented that the Board is very supportive of this program.

**Commissioner Schwab opened the floor for further Public Comment:**

- Jerry Koch, Elizabeth. Mr. Cook provided an update on the Elbert County Water Task Force and reported that "the steering committee of the Elbert County Water Task Force has reviewed the qualifications, background and experience of the candidates and met with each of them. The additional criteria for inclusion in the group is our belief that each of the candidates must be able to be objective and not bring a personal agenda into the group and must identify any potential conflicts of interest and address them appropriately.

Since the primary goal of the Water Task Force is to communicate technical and practical information to the Elbert County BOCC, Planning Department, Planning Commission and the public we are pleased with the makeup of the group”.

They are as follows:

- David J. Bower- As a multi-disciplinary Engineer/Environmentalist/Entrepreneur and Business Executive he has been involved in an incredible number of cutting edge water related ventures.
  - Water treatment system for contaminant removal of oil and gas produced waters.
  - Design and supply of contaminated land and pollution cleanup techniques.
  - Mobile water treatment units for deployment onto frac site and liaison with regulators for permitting and licensing of technology.
- Tim Buchanan- A consultant for a major international water infrastructure engineering firm.
- Will Koger- Mr. Koger has over 20 years of engineering experience in the water/wastewater industry, including water supply acquisition and conservation; water treatment, storage, pumping and distribution; wastewater treatment, collection and pumping; water reuse and storm water. Mr. Koger was assistant general manager at Arapahoe County Water and Wastewater Authority as well as working with the Town of Castle Rock where he had similar responsibilities. In addition, Mr. Koger has diverse experience with projects on the Colorado Front Range, Northern New Mexico, Rocky Mountain Arsenal groundwater contamination, Leadville mine drainage water treatment and many other projects.
- David Sweeten- Experience in water treatment and pump stations, storage, distribution, management regulations and enforcement. Mr. Sweeten brings practical aspects of the workings of the Denver Water Board and other water districts.
- Susan Saint Vincent- Experience with Western Water Company and Cherry Creek Project Water Authority. Ms. Saint Vincent is part owner of the Pinery Water District and has a background in Human Resources, operational tasks such as pumping wells, monitoring and reporting general property maintenance, coordinating operations with Douglas County Staff and Commissioners, the Corp of Engineers, Division of Wildlife and State Engineer Representatives.

Work sessions for the Water Task Force will be scheduled in the near future. The meeting will be announced and open to the public.

- Norm Happel, Elizabeth. Mr. Happel inquired about a statement read in the Agenda regarding the inhibition of using the BOCC meetings for campaign purposes.

The Board clarified that this statement is referring to political campaign use. Mr. Happel also expressed his disapproval of the business plans that the County has developed and inquired as to which County Departments are self-supporting. Mr. Happel continued to express his disapproval of the closure of the Elbert County Compactor Site, as this is a necessary amenity to the people of the County and encouraged the Board to create a self-sustaining business from the Compactor Site.

Commissioner Schwab commented that the County is in the process of interviewing a company that would like to put in a full recycling center at the Compactor Site.

- Jill Duvall, Elizabeth. Ms. Duvall came before the Board to encourage them to repeal Resolution 10-58, E 86 Metropolitan District. After speaking to an Attorney specializing in Metropolitan Service Districts, Ms. Duvall quoted, "If the Elbert County Commissioners were to withdraw their prior approval; that would be of great benefit to those opposing the Districts formation". As Mr. Miller said, this district was approved in 2010, however the bases of my request has to do with changes that have occurred since 2010. The Metropolitan District has to serve the public's interest, it is Ms. Duvall's concern that the County is still looking at documentation that may involve Mr. Nyquist and his prior involvement with E86 Metropolitan District.
- Tony Corrado, Elbert. Mr. Corrado commented on a statement that indicates that the oil and gas regulations would inhibit oil and gas development. It is Mr. Corrado's opinion that this statement is untrue; there is nothing to support the fact that the oil and gas companies won't extract \$106.00 per barrel of oil just because of regulations.
- Donna Dreyer-Ross, Agate. Ms. Ross commented on the Elizabeth 86 Commercial Metro District Service Plan and made comments with regard to the same. Ms. Ross encouraged the Board to revisit the Service Plan "since numbers for deriving income were calculated back in June of

2010, projected income derived for taxes, fees and mills should be recalculated”.

- Belinda Seville, Elizabeth. Ms. Seville expresses her concern that the Board would not rule against the E86 Metro District due to fear. Ms. Seville also announced that she will be hosting the National Day of Prayer at the Elbert County Fairgrounds and has asked that the fee for the Fairgrounds building be waved.

Ed Ehmann, Elbert County Public Works. Mr. Ehmann addressed Ms. Seville's request to wave the Fairgrounds fee and explained that the majority of this fee will be waved but is requesting \$25.00 for the use of the Fairgrounds building which will cover use of utilities.

Commissioner Schwab commented that this \$25.00 fee is standard for nonprofit organizations.

- Larry Ross, Agate. Mr. Ross expressed his concern regarding the E86 Metro District. It is Mr. Ross' understanding that Carl Nyquist is under investigation for violation of conservation easements which, in his opinion, speaks to the financial stability of Mr. Nyquist's organization.
- Robert Thompson, Elizabeth. Mr. Thompson commented on the Elbert County Water Advisory Committee and the open ended agenda of the Committee. It is Mr. Thompson's opinion that this Committee could not operate without a bias.
- Beth Blotter, Agate. Ms. Blotter commented on the E86 Metro District and pointed out, in her opinion, that the citizens of Elbert County have been opposed to this Metro District from its conception.

Commissioner Schwab paused the meeting for a 5 minute break.  
Meeting reconvened at 10:59

Commissioner Schwab addressed Ms. Belinda Seville's comment regarding the operation of the BOCC and implying that it operates out of fear. Commissioner Schwab explained that the Board operates from 'Best Practices' and what is best for the County but, in no way, do they

operate out of fear. The Board is aware that not all citizens agree with the decisions made.

Commissioner Schlegel commented on the water issue with regard to the E86 Metro Water District. "This is a property rights issue; the district bought the property and they are entitled by a natural right called Property Rights and are entitled to use that property in any way they choose as long as it meets the requirements of the law to benefit from this property. This is no different from any of us that live in the County or in the United States who are entitled to own property. People have tried to put this off as a Corporation that is just trying to make money or that the Board is in fear of legal events that may take place. Again, this is a property right issue, the district followed the law and was approved as a special district and are now asking the Court to establish that district.

**7. Staff Report: None**

**8. Old Business:**

- a. Approval of Contract/Letter of Engagement for Audit Services with EideBailly-Commissioner Schlegel. In January 2012 Elbert County went out to bid for an Auditing Service Firm. Two bids were received- EideBailly and Ruben Brown. After review of both proposals, the staff selected EideBailly as the company who will provide audit services for 2012 and possibly beyond 2012.

Commissioner Schlegel introduced Kimberly Higgins from EideBailly. Ms. Higgins gave a brief history of EideBailly, a company that started in 1917 and is the 24<sup>th</sup> largest CPA firm in the Country. EideBailly has six offices in Colorado- Vail, Frisco, Grand Junction, Boulder, Golden and Greenwood Village and will begin their audit service with Elbert County as of today.

**9. New Business:**

- a. Request to approve 2012 Election Sites: Blake Hepburn, Elbert County Elections Manager. Mr. Hepburn came before the board to request a motion to establish the polling locations for 2012 Primary and General Elections. Mr. Hepburn explained that in 2011 the Coordinated Election was conducted as a Mail Ballot Election, meaning every voter received a ballot by mail. The 2012 Primary and General Elections will be conducted as Polling Place Elections, this means voters have 3 options on how to vote:
  - 1. Vote by mail- voter must request a mail-in ballot online or through the Elections Office.
  - 2. Early voting- located at the County Building, one week prior to the Primary and two weeks prior to the General Elections.



3. Election Day- at polling locations; Precincts 5 & 6 will meet at Big Sandy School in Simla, Precincts 2, 3, 4, 11 & 13 will meet at the Elbert County Fairgrounds in the Exhibit Hall, Precincts 1, 10, 12, 14 and 18 will meet at Elizabeth High School and Precincts 7, 8, 9, 15, 16 & 17 will meet at Singing Hills Elementary School.

The four polling locations are a consolidation from the 2010 General Election when there were 8 polling locations.

The reason for consolidation is because we anticipate an increase to mail-in voter.

The Elections Office is launching a Voter Education Campaign. The main focus of the campaign is to let voters know of their options for voting and to make the voting process as convenient and straight forward as possible. Public Notice was posted in the County Building at 215 Comanche St., in Kiowa, outside the election office, on the County website and on the County Facebook page- soliciting public comment on the voting locations.

Mr. Hepburn read into record the public comments received and answers from the Clerk and Recorder, they are as follows:

*"Regarding rational list for doing this:*

*Re1. Above, are these four locations 'Vote Centers?' Means November 12 elections remain as in the past? If means consolidation for a presidential year election, best start this the following year, 2012, and not... public notice and seeking written comments regarding the polling locations for the---the 2012 Primary and General Elections, indicating this coming round of elections."*

*Re2 how much does 25% amount to?*

Tim Gerrells, Western County Ranches

*Regarding RE. "are these 4 locations "vote centers?"*

These 4 Polling Place locations are not vote centers. We agree with you that 2013 will be a better time to consider vote centers, rather than a presidential election year.

*Regarding Re2. How much does 25% amount to?*

25% of the judges salaries from 2010 equates to about \$5,000.00.

Commissioner Schwab expressed his concern with the parking at Singing Hills School.

Mr. Hepburn explained that the Elections Department has not yet spoken with Singing Hills as this meeting needed to take place first. Mr. Hepburn continued to explain that there is a plan in place to work with Singing Hills and the Sheriff's Department on the logistics of parking. For the Primary elections, 37% of voters are Mail in Ballot and would not need to use the

Singing Hills facility. The Elections Department will utilize the time between the Primary and the General Elections to launch the Voter Education Campaign in which voters will be well informed of their voting options, to include mail in ballot.

Commissioner Shipper clarified that 50% of the voters in Elbert County are mail in ballot.

Mr. Hepburn confirmed this percentage. Through the voter education campaign, an estimated 75% will become mail in ballot.

Commissioner Schwab opened the floor for public comment: none

Commissioner Shipper moved that the Board approve the polling locations for the 2012 Primary and General Elections as presented by the Clerk and Recorder Office staff with: Big Sandy School at 619 Pueblo Avenue, Simla 80835, hosting precincts 5 & 6; Elbert County Fairgrounds Exhibit Hall at 95 Ute Avenue, Kiowa 80117, hosting precincts 2,3,4,11,&13; Elizabeth High School at 34500 County Road 13, Elizabeth, 80107, hosting precincts 1,10,12,14,& 18; Singing Hills Elementary School at 41012 Madrid Drive, Parker, 80138, hosting precincts 7,8,9,15,16 & 17.

Commissioner Schlegel seconded, motion passed.

- b. 1.** Approval of the Living Snow Fence Agreement between Ruth Raun and Elbert County. Ed Ehmann, Elbert County Public Works. Mr. Ehmann explained that 2012 is the third year Elbert County has used living snow fences. Elbert County Public Works Department has designated funds for this project, not to exceed \$2,210.73, to purchase approximately 3,600 feet of weed barrier fabric and certain fence supplies.

Commissioner Schwab commented on the success of the Living Snow fence program.

Commissioner Shipper moved that the Board approve and execute the Working Agreement between the Board of County Commissioners on behalf of Elbert County Public Works Department, the Kiowa Conservation District, the National Resources Conservation Service, the Don Moore tree Planting Service, and Ruth K. Raun as landowner/operator, regarding the purchase, installation, and maintenance of a Living Snow Fence along Section 14 and 21, T9S, R64W of Elbert Road for a term of at least three years and at a cost not to exceed \$2,210.73.

Commissioner Schlegel seconded, motion passed.

2. Approval of Living Snow Fence Agreement between Badly Scattered Cattle Company and Elbert County: Ed Ehmann, Elbert County Public Works. This Agreement is for a living snow fence along a 1,450 foot section and a 400 foot section of County Road 90 for a total cost of \$3,108.95. This Agreement has been approved by the County Attorney and is appropriate for approval as to form.

Commissioner Schwab invited Mr. Ehmann to explain to the public how the living snow fences save money and time.

Mr. Ehmann explained that the Public Works Department has made efforts to install living snow fences in each of the three soil conservation district in the County. In the first year, a significant difference was noticed. With each year, the anticipated savings per district is between \$800.00 and \$1,000.00 per snow storm as the trees mature.

Commissioner Shipper moved that the Board approve and execute the Working Agreement between the Board of County Commissioners on behalf of Elbert County Road & Bridge, the Double El Conservation District, the National Resources Conservation Services, the Don Moore Tree Planting Services, and Badly Scattered Cattle Company as landowner, and Smith Ranch as Operator, regarding the purchase, installation, and maintenance of a Living Snow Fence along Section 7, T 10S, R 60W of County Road 90 for a term of at least three years and at a cost not to exceed \$3,108.95.

Commissioner Schlegel seconded, motion passed.

- c. Development Agreement- Elbert County and Lennar Colorado, LLC, Elkhorn Land Company, LLC, and Elkhorn Ranch Venture, LLC. Ed Ehmann, Elbert County Public Works.

Mr. Ehmann – This road way agreement is for an existing subdivision with approximately 250 lots and previously constructed roads. This Agreement is the Final Road Acceptance Agreement in which the County will make final acceptance of roads located in the Elkhorn Ranch Subdivision in exchange of \$40,000.00 paid by the Developers to the County. The proposed Final Road Agreement is appropriate for approval as to form.

\*Commissioner Schlegel recused himself from voting on the Development Agreement as stated above.

Commissioner Shipper moved that the Board approve and execute the Final Road Acceptance Agreement between the Board of County Commissioners on behalf of Elbert County Public Works, Lennar Colorado, LLC, Elkhorn Land Company, LLC and Elkhorn Ranch Venture, LLC regarding the final acceptance of the roads in the Elkhorn Ranch Subdivision by the County in exchange for \$40,000.00 payable to Elbert County.

Commissioner Schwab seconded, motion passed.

- d. Designation of Custodian of Records for Elbert County. Commissioner Kurt Schlegel. For the record, Commissioner Schlegel commented on the large numbers of Open Records Requests the County has received, prompting the assignment of a Custodian of Records. Commissioner Schlegel moved to assign the Director of Administrative Services, Ms. Cherie Radeker, as Custodian of Records. Commissioner Shipper seconded, motion passed.
- e. Elbert County Emergency Operations plan (EOP) for FY12. Cory Stark, Elbert County Emergency Management. Mr. Stark brought before the Board the re-write of the EOP for Elbert County. The EOP allows the County work seamlessly with other emergency agencies in the event of a catastrophe.

Commissioner Schlegel recognized Cory Stark for the hard work that went into rewriting the EOP.

Commissioner Shipper moved to adopt the Re-Write of the Elbert County Emergency Operations Plan, version 2012-001 for the year 2012, as presented by Cory Stark- Director of Emergency Management for Elbert County, and recognize the current plan officially in force on March 14, 2012. This document supersedes all previous emergency operations plan for the County on this date. Delegation of authority from the Board of Commissioners to make minor changes to the plan is entrusted to the Director of Emergency Management for Elbert County.

Commissioner Schlegel seconded, motion passed.

Mr. Norm Happel inquired if Elbert Counties EOP is connected with any of the adjacent counties.

Mr. Stark explained that the rewrite of the EOP allows the County to integrate with our neighboring counties but the EOP plan itself is tailored to meet the needs of Elbert County.

- f.** Code Red Renewal Contract. Cory Stark, Elbert County Emergency Management. Mr. Stark brought before the Board the Code Red Reverse Notification Renewal Contract for Elbert County. This process has been used in the County for a number of years and allows prompt notification to the citizens in the event of an emergency. The original Agreement and Addendum was effective for a term of twelve months and has already been renewed by the county twice. The proposed Amendment extends the Service Agreement and Weather Warming Addendum for an additional twelve months, from March 25<sup>th</sup>, 2012 through March 24<sup>th</sup>, 2013. The cost to the County for the additional year of service has been reduced from the Agreement's original \$10,000.00 to \$6,000.00.

The contract has been reviewed by the County Attorney and has been found appropriate for approval as to form.

Commissioner Schlegel commented that this is an excellent program to keep the citizens of Elbert County informed.

The link has been made available to sign up for the program on the County website.

Commissioner Shipper moved that the Board approve and execute the Amendment to the Code Red Services Agreement between Elbert County and the Emergency Communications Network, Inc. for the continued provision of emergency communications services to the County through March 24<sup>th</sup>, 2013 for \$6,000.00 and the continuation of the Code Red Weather Warming Services Addendum for \$5,000.00; for a total cost of \$11,000.00 to the County.

Commissioner Schlegel seconded, motion passed.

Commissioner Schlegel again commended Mr. Cory Stark for being recognized by his peers at the Colorado State Emergency Management Conference.

Commissioner Schwab recognized Trudy Peterson, the Administrator of the Town of Elizabeth and Stacy Arrington, Elizabeth Town Planner; who joined the BOCC meeting.

## **10. Land Use:**

- a.** National Flood Plain Insurance Program- Flood Damage Prevention Resolution. Carolyn Parkinson, Elbert County Community & Development Services. Ms. Parkinson brought before the Board a request to replace resolution 11-08, National Flood Insurance Program. The proposed Resolution

is intended to provide for the following three changes to the Elbert County Floodplain Regulations:

**1. Establishment of Development Permit**

Resolution 11-08, Article III, Sec C, Establishment of Development Permit, states that a development permit shall be required to ensure conformance with the provisions of this resolution. As such, the proposed resolution will replace Resolution 11-08 to add the Floodplain Development Permit and to clarify the general permit procedures of Article IV, Sec C of Resolution 11-08.

**2. Compliance with new state floodplain regulations**

In addition, this resolution will bring Elbert County into compliance with the "Rules and Regulations for Regulatory Floodplains in Colorado," adopted by the Department of Natural Resources Colorado Water Conservation Board on January 14, 2011. To allow time for local jurisdictions to comply with the new regulations, these additional state requirements do not become mandatory until January 14<sup>th</sup>, 2014. Community and Development Services suggest that inclusion of these new regulations will have minimal effect at present and will avoid duplication of effort on the part of the County when these requirements become mandatory in 2014.

**Summary of State Changes**

The new state regulations increase the minimum base flood elevation requirements for development in the floodplain, and limit any increase in surface water profile that is the result of floodplain development. Additionally, the new regulations establish that a Letters of Map Revision based on Fill (LOMRF), does not exclude a property from FEMA floodplain building standards. Finally, the new regulations establish base flood elevation requirements for Critical Facilities and provide guidance to local jurisdictions in defining these facilities.

**3. Incorporate Floodplain Regulations into Elbert County Zoning Regulations**

This resolution will include all unincorporated Elbert County and will require an amendment to County Zoning Regulations, becoming Section 25 of the Elbert County Zoning Regulations. Per statute, the Board of County Commissioners is required to publish notice of the time and place of the hearing in a newspaper of general circulation in the County at least

fourteen (14) days prior to the public hearing (CRS 30-28-112). Proper Public Notice appeared in the Ranchland News on December 22, 2011 and is on file in the Community and Development Services Office.

Elbert County Community and Development Services recommends replacement of Resolution 11-08; National Flood Insurance Program- Flood Damage Resolution with proposed Resolution here in, conditions of approval to include:

- Adoption of the submitted Flood Damage Prevention Resolution.
- Resolution to be recorded within 30 days of Board of County Commissioner approval.
- Adopt the finding enumerated herein.

Commissioner Schlegel inquired as to which Towns in Elbert County have adopted this resolution.

Ms. Parkinson reported that Kiowa is the only Town to adopt the Resolution thus far.

Commissioner Schlegel commented on the ramifications if the County should choose not to take action on the Resolution.

Ms. Parkinson explained that if the County did not take action, the current regulations would remain in place; however the current regulations do put the County out of compliance with FEMA. Eventually the County would be suspended and could be withdrawn from the program which would disallow Elbert County from receiving certain grants and no new Flood Insurance policies could be purchased resulting in the citizen's mortgages being called due by their Lenders.

Commissioner Schwab opened the floor for public Comment: None

Commissioner Shipper moved that the Board rescind and replace Resolution 11-08 with the revised National Floodplain Insurance Program-Flood Damage Prevention Resolution, as submitted by the Floodplain Administrator, in order to continue in participation of the National Flood Insurance Program and to incorporate Section 25 of the National Flood Insurance Program- Flood Damage Prevention into the Elbert County Zoning Regulations.

Commissioner Schlegel seconded the motion and commented that the previous Board of County Commissioners entered into the National Flood Insurance Program which is a federally mandated program. The Commissioner read a statement from the Director of FEMA; the National Flood Insurance Program is eighteen trillion dollars in debt

and there is little hope of paying this debt off. At this point it would be very difficult for the County to opt out of this program.

With no public comment, the motion passed.

- b. Adoption of Floodplain Development Permit fees: Carolyn Parkinson, Elbert County Community & Development.** In association with the replacement of Resolution 11-08 the proposed resolution is intended to provide for a Floodplain Development Permit fee schedule. Community & Development Services Department recommended approval of Floodplain Development fee schedule- Resolution 12-15, conditions of approval to include:

- Adoption of the submitted Floodplain Development Permit fee schedule.
- Resolution to be recorded within 30 days of Board of County Commissioner approval.
- Adopt the finding enumerated herein.

Commissioner Schwab inquired if the fees need to be published.

Ms. Parkinson explained that fees do not need to be published before approval.

Commissioner Schwab opened the floor for public comment:

- Bev Blotter, Agate. Ms. Blotter inquired as to why the County cannot prohibit building in a flood plain.  
Ms. Parkinson explained that it is problematic to inhibit building on a flood plain because it infringes on property rights. FEMA regulations do not restrict property use.  
No further public comment.  
Commissioner Shipper moved that the Board approve and adopt the Elbert County Floodplain Development Permit Fees- Community and Development Services Department Fee Schedule Resolution for provision of a fee schedule for Floodplain development permits.  
Commissioner Schlegel seconded, motion passed.

- c. Request for three (3) year extension for Verde Ridge/Diamond Ridge to file Final Plat.** Curtis Carlson, Elbert County Community & Development Services/Tom Maroney. Mr. Carlson explained that the applicant requested a three year extension on October 24<sup>th</sup>, 2011, before the dead line. It is left to the discretion of the BOCC, based on the facts and circumstances of the request and information provided by Community & Development Services, whether to



grant the requested extension through a development agreement. The applicant requested a three year extension. The Subdivision Regulations limit the usual course of Extension for submitting a Final Plat to two years after approval of the applicable preliminary plat. Extensions are typically for a period of one year, unless a longer period of time is granted by the Board. At the time of initial approval by the Board of Diamond Ridge Final Plat and Verde Ridge Preliminary Plat, the applications were deemed compliant with the Elbert County Master plan, Zoning, Subdivision and 1041 Regulations. Approval of the requested three (3) year extension for Final Plat of Verde Ridge triggers the following:

- An amendment to the previously approved Diamond Ridge Final Plat will be accomplished with in the submission of one Final Plat that includes both Verde and Diamond Ridge to be submitted to Elbert County Community & Development Services on or before December 7, 2014.
- The Final Plat will be subject to any new/current Elbert County /State of Colorado and / or other appropriate regulations at the time of application for a Final Plat.
- An appropriate Subdivision Improvement Agreement needs approval by the Elbert County Board of County Commissioners following Final Plat approval and prior to any development going forward.

Commissioner Shipper clarified that if the extension is approved the Rules and Regulations will be in effect two/three years from today. Mr. Carlson confirmed that this is correct. If the two year extension is granted the current rules apply.

Mr. Tom Maroney, representing the applicant, approached to the Board with an explanation of economic hardship as to why the delay in moving forward with Verde/Diamond Ridge.

The floor was opened for public comment:

- Mr. Dejohn , Elizabeth. Mr. Dejohn inquired as to where the Verde/Diamond Ridge Development is located and if extension is granted shouldn't fees be charged to the developer.  
Mr. Richard Miller, Community & Development Services, explained that the property is located at County Road 150 and County Road 13 in Elizabeth. He continued to explain that fees will be charged to the developer at the time the Final Plat is recorded. Some fees have been charged all ready.

- Norm Happel, Elizabeth. Mr. Happel inquired as to the road access to the Verde/Diamond Ridge.  
Mr. Miller explained that at the time the Final Plat is recorded road access will be worked out. There is preliminary road access at this time.
- Tony Corrado, Elbert. Mr. Corrado inquired as to the water supply for the Verde/Diamond Ridge subdivision.  
Curtis Carlson addressed Mr. Corrado's question. The water issue was reviewed at the time of the original application, wells were found to be adequate. When the Final Plat is reviewed the water issue will be revisited to ensure that adequate water is available.
- Daniel Dejohn inquired as to the number of acres per lot.  
Mr. Carlson explained that the smallest lot is approximately .65 acres and the largest, approximately half an acre.

Commissioner Schlegel commented on the need for a central water system.

Mr. Carlson confirmed that there will be a central water and sewer system.

- Jill Duval, Elizabeth inquired if the water district has already been approved.  
Mr. Carlson confirmed that it has.  
No further public comment.

Commissioner Shipper moved to approve a three year extension to December 7, 2014, within which to accept an application for a Final Plat for Verde Ridge/Diamond Ridge with the condition that: all Land Use Regulations and Road specifications for Elbert County and any applicable Colorado regulations current at the time of Final Plat application shall apply.

Commissioner Schlegel seconded, motion passed.

- d. Limon Wind Farm, SU 11-0008 & 1041 0009 Eastern Colorado Interconnection Transmission Line & 1041 Permit.** Request to establish up to 21 wind turbine generators. Curtis Carlson, Elbert County Community & Development Services. Mr. Carlson requested to establish up to 21 wind turbine generators approximately 20 miles of the 345 KV Transmission line, one anemometer tower and related infrastructure in Elbert County. The applicant desires to develop and construct a wind energy generation facility in Lincoln and Elbert

Counties. Up to 21 wind turbine generators will be located in Elbert County, as stated above.

Limon Wind, LLC and Eastern Colorado Interconnect, LLC will develop and build the wind energy facilities and transmission line in Elbert County as part of a greater project consisting of up to 250 wind turbine generators and a 45 mile transmission line in portions of Elbert, Lincoln and Arapahoe Counties, collectively known as the "Project".

Mr. Carlson read into record the Recommended Conditions of Approval:

The Applicant must submit the following:

- Re-vegetation plan
- Drainage report
- Storm water management plan
- Erosion control plan
- Geotechnical study
- Dust abatement plan
- Waste handling plan

for approval by Elbert County Engineering prior to issuance of any building permits. A separate letter shall be submitted to Community & Development Services confirming approval of each by Elbert County Engineering prior to issuing any building permits.

The applicant shall submit evidence to Community & Development Services that Federal Aviation Administration (FAA), requirements have been met for the facility prior to commencing operation.

Building/structures shall conform to the various codes adopted at the time of the permit application.

Each turbine will require an engineered foundation based on a Site-specific Geotechnical Report. The report shall be submitted to the Elbert County Engineer, for review and approval prior to construction.

The applicant will:

- Coordinate with the Agate Fire and Limon Fire Protection Districts about any structures supporting the power line in their respective service areas.
- Submit the design of the structure, description of equipment and contents of that structure.

- Comply with Resolution 99-35 as related to fire protection. A letter of confirmation from the Fire Department will be submitted to CDS prior to any building permits being issued.

Applicant will continue to coordinate with Colorado Division of Wildlife as may be requested.

The applicant will provide the Elbert County Flood Plain Manager with an as-built map, complete with Geographic Information System (GIS) coordinates, when the poles placement is complete for the two floodplain crossings.

The applicant will coordinate an agreement with Elbert County Public Works Department for road maintenance, improvements and inspections, and a staging area as necessary, and will provide an appropriate letter of credit or corporate guarantee.

- Any staging area location off I-70 will need to coordinate with Colorado Department of Transportation.
- Any location off an Elbert County Road will need to be coordinates with Elbert County Public Utilities.

A letter of confirmation/copy of the agreement from Public Works that this agreement has been completed and will be provided to Community Development Services to be filed, prior to any construction permits being issued.

Upon permanent decommissioning, termination or abandonment of the Project, NextEra, Limon Wind LLC, Eastern Colorado Interconnect LLC Legal obligations and financial guarantees to decommission facilities are contained in the easement agreement with each landowner.

Decommissioning will involve removing:

Wind turbines and power generation equipment.

Electrical system

Structural foundations per ROW and Easement grant requirements,  
Road,

Re-grading and

Re-vegetation.

Abandoned roads will be reclaimed or left in place based on the preference of the Landowner at the time of decommissioning.

Elbert County Engineering, Public Works, Environmental Health, and Build departments will sign-off on a letter confirming decommissioning complete, to be placed in the project file with Community & Development Services.

The applicant shall, to the extent required by Colorado law, reasonably accommodate access to and development of subsurface mineral interests with respect to their proposed use of the property for wind farm facilities. In this regard, the applicants shall, as a condition of approval and prior to the construction or installation of any wind farm facility, provide evidence that they have entered into, or made good faith and commercially reasonable efforts to enter into, surface use agreements or other compatible development agreement with mineral estate owners who have filed timely objections to the land use applications pursuant to Colorado statutes.

The applicant will record the Special Use Review Exhibit and associated documents within one hundred eighty (180) days of approval by the Board of County Commissioners, subject to applicable extensions pursuant to County regulations.

The Special Use will not become effective until all fees are paid, conditions of approval are met, and the applicants have executed any reasonable requested documents to grant the use of right-of-way in County roads 142 and 146 for the term of the permits, and all applicable documents have been recorded.

Notwithstanding anything to the contrary contained in the Elbert County Zoning Resolution, Elbert County's Matters of State Interest Regulations, or any resolution related to these permits, the applicants shall have the right to freely assign their rights in these permits, provided, however, that the assignee, or assignees, as the case may be, shall continue to comply with the terms of these permits; and provided further, that the applicants must provide notice to Elbert County Community & Development Services within sixty (60) days of such assignment or assignments. For purposes of illustration, but not limitation, the applicants' rights to "assign" shall include the right to assign the permits herein granted, to enter into a transaction that results in the merger, consolidation, or sale of assets of the applicants,

or either applicant, or any other change of control that alters their ownership interest of the applicants, or either or both of their assets.

Adopt the Findings enumerated herein.

The proposed Resolution has been reviewed and is appropriate as to form.

Commissioner Schlegel inquired as to the location of the wind farm in conjunction with Cedar Point.

Mr. Carlson explained that the wind farm location is North Cedar Point.

Commissioner Schwab invited the applicant, Mr. Kevin Gildea, of NextEra to speak. Mr. Gildea gave an over view of NextEra Energy Inc. headquartered in Juno Beach Florida. NextEra Energy Inc. is described as a leading clean energy company with 2010 revenues of more than \$15 billion, nearly 43,000 megawatts (MW) of power generating capacity and approximately 15,000 employees in 28 states and Canada.

Floor was opened to Public Comment.

- Donna Dreyer-Ross, Agate. Ms. Ross expressed her appreciation to NextEra.
- George Saum, Agate. Mr. Saum expressed his approval of NextEra.
- Craig Curl, Elbert County Enterprise Authority. Mr. Curl commented that NextEra Wind Farm is proving profitable to the County in the creation of jobs.
- Daniel Dejohn, Agate. Mr. Dejohn expressed his concern regarding the wind farm and the potentially negative effects it could have on the land. Mr. Gildea, NextEra, responded to Mr. Dejohn's concerns. NextEra make great effort to take excellent care of their equipment and the environment.
- Kevin Treak, East Elbert County. Mr. Treak's land will be directly affected by the power line for the wind farm. Mr. Treak expressed his appreciation for the professional way NextEra has handled business with him.
- Ed Buchler, Agate. Mr. Buchler owns land affected by the power line and commented that NextEra answered all his questions in a professional manner and is in favor of the wind farm.

- Susan Shipper, Agate. Ms. Shipper inquired as to how many birds are killed by the wind turbines.

Tom Thatcher, NextEra. Mr. Thatcher responded to Ms. Shipper's concern regarding birds and explained that technology has changed. The wind turbines are much less attractive to the birds.

Commissioner Schlegel commented on the question of noise.

Mr. Thatcher responded by explaining that with new technology the noise is considerably less than it used to be.

No further public comment.

Commissioner Shipper moved that the Board approve and adopt a resolution for the approval of Special Use Permit 11-0007 for Limon Wind Farm Project and Special Use Permit 11-0008 and 1041 11-0009 for the Eastern Colorado Interconnect Transmission Line Project.

Commissioner Schlegel seconded, motion passed.

It was requested by NextEra that each of the Commissioners vote on each Application separately.

Commissioner Schwab paused the meeting for a two minute break.

Meeting reconvened at 1:08p.m.

After legal consultation the Board decided to leave the Resolution as drafted.

## **11. County Attorney: Alex Beltz**

- a. Joint Resolution between Elbert County and the Town of Simla regarding the Big Sandy School District Annexation. Elbert County Public Works  
The Big sandy School District annexed a section of land into the Town of Simla that contained County Road 125. The County owns an easement located on County Road 125 for a 30' right-of-way for ingress, egress and access. It is understood that the County desires to maintain the legal right to the easement after the annexation is completed. The proposed resolution is appropriate for approval as to form.

Commissioner Shipper moved that the Board approve and adopt the Joint Resolution between Elbert County and the Town of Simla regarding the big Sandy School District Annexation and the Elbert County Owned Right-of-Way located on County Road 125.

Commissioner Schlegel seconded, motion passed.

- b.** This item was deleted from the Agenda
- c.** Approval of Haven Corporation Amendment to Independent Contract for provision of Family Coaching Services. Elbert County Human Services.  
The terms of the original contract are from June 1, 2011 through May 31<sup>st</sup>, 2012. The original contract amount was for \$78,000.00. An additional amount is needed in the amount of \$50,000.00. The funds are a part of the 2011/2012 CORE Services Funding.

Commissioner Shipper moved that the Board approve and execute the Independent Contractor Agreement between Elbert County on behalf of the Elbert County Department of Human Services and Haven Corporation increasing the maximum contract price of \$78,000.00 to \$128,000.00.  
Commissioner Schlegel seconded, motion passed.

- d.** Approval of Reach, Inc. Independent Contract Agreement for Intensive Family Therapy. Elbert County Human Services.  
The terms of this contract are from February 21<sup>st</sup>, 2012 to May 31, 2012 up to the amount of \$2,000.00; \$75.00 per hour.

Commissioner Shipper moved that the Board approve and execute the Independent Contractor agreement between Elbert County on behalf of the Elbert County Human Services and Reach Inc. regarding the provision of Intensive Family Therapy services for the Elbert County Department of Human Services for a contract price up to \$2,000.00.  
Commissioner Schlegel seconded, motion passed.

Meeting Adjourned at 1:15p.m.



**BOARD OF COUNTY COMMISSIONERS**

**ELBERT COUNTY, COLORADO**

*Del Schwab*

**Del Schwab, Chairman**

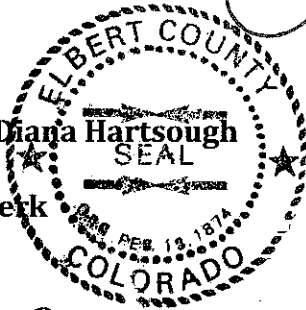
*John Shipper*

**John Shipper, Vice Chair**

*Kurt C Schlegel*

**Kurt Schlegel, Commissioner**

**ATTEST: Diana Hartsough**  
**County Clerk**



**BY:**

*Doni Trenble*

**Clerk to the Board of County Commissioners**